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MONTANA LEGISLATIVE HISTORY

Chapter 429 19 97

Bill H 572 S _____ Original bill & history X c

H. Committee on JUDICIARY

Hearing Date(s) 2/19 X c

Exec. ACTION 2/20 X c

_____ c

_____ c

Date Out _____ c

S. Committee on JUDICIARY

Hearing Date(s) 3/20 X c

3/27 X c

_____ c

_____ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

1997 LEGISLATIVE HISTORY

The 1997 Montana Legislature has dramatically changed the nature of the legislative minutes. Specifically, the minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are somewhat fuller in content. Exhibits available from the State Law Library (which may include written statements, attendant information, roll call votes, roll call attendance, a list of public members present, specific action taken on legislative bills, etc.) are included with this request. For information on other exhibits, contact the Montana Historical Society Archives at 444-4774. Exhibits may also be purchased on a CD-ROM from the Montana Legislative Council (444-3064).

Just as in the 1995 legislative session, the House and Senate hearings were recorded. The Historical Society is the depository for the tapes. For information on accessing the tapes, call the archives at 444-4774.

If you have concerns over the format of the 1997 legislative minutes, it is suggested that you contact your state legislators.

4/18 SIGNED BY GOVERNOR
CHAPTER NUMBER 293
EFFECTIVE DATE: 04/18/97

HB 572 INTRODUCED BY ANDERSON, ET AL. LC1156 DRAFTER: MACMASTER

PROVIDE FOR SEVERAL LIABILITY FOR MOST TORT ACTIONS

2/17	INTRODUCED		
2/17	FIRST READING		
2/17	REFERRED TO JUDICIARY		
2/19	HEARING		
2/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/24	2ND READING PASSED	80	16
2/26	3RD READING PASSED	82	17

3/04	TRANSMITTED TO SENATE		
3/04	FIRST READING		
3/04	REFERRED TO JUDICIARY		
3/20	HEARING		
3/28	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/04	2ND READING CONCURRED	36	13
4/05	3RD READING CONCURRED	37	13

4/15	RETURNED TO HOUSE WITH AMENDMENTS		
4/16	2ND READING AMENDMENTS CONCURRED	50	48
4/16	3RD READING CONCURRED AS AMENDED	61	38
4/18	SIGNED BY SPEAKER		
4/18	SIGNED BY PRESIDENT		
4/18	TRANSMITTED TO GOVERNOR		
4/21	RETURNED TO HOUSE WITH GOVERNOR'S PROPOSED		

4/21	AMENDMENTS		
4/21	2ND READING GOVERNOR'S AMENDMENTS		
	CONCURRED	89	4
4/21	3RD READING GOVERNOR'S AMENDMENTS		
	CONCURRED	73	26

4/21	SENATE		
4/21	2ND READING GOVERNOR'S AMENDMENTS		
	CONCURRED	48	0
4/21	3RD READING GOVERNOR'S AMENDMENTS		
	CONCURRED	37	11

4/24	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/25	TRANSMITTED TO GOVERNOR		
4/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 429		
	EFFECTIVE DATE: CONTINGENT UPON HOUSE BILL 571 BEING		
	INVALIDATED OR FOUND TO BE UNCONSTITUTIONAL, THIS		
	BILL WOULD BE EFFECTIVE ON THE DAY AFTER THE		
	EFFECTIVE DATE OF THE INVALIDATION OR FINDING OF		
	UNCONSTITUTIONALITY		

HB 573 INTRODUCED BY JORE LC1376 DRAFTER: PETESCH

REVISE THE LAWS GOVERNING THE DISSOLUTION OF MARRIAGE

2/17	INTRODUCED		
2/17	REFERRED TO HUMAN SERVICES & AGING		
2/17	FIRST READING		
2/19	HEARING		
2/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/24	2ND READING DO PASS AS AMENDED MOTION FAILED	45	55

HB 574 INTRODUCED BY SMITH, ET AL. LC0622 DRAFTER: FOX

AUTHORIZE THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF
GENERAL OBLIGATION BONDS FOR THE CONSTRUCTION OF A 500-BED,
STATE-OPERATED, CLOSE-SECURITY PRISON FOR MALES

2/17	INTRODUCED		
2/17	FIRST READING		
2/17	REFERRED TO APPROPRIATIONS		
3/10	HEARING		
3/11	TABLED IN COMMITTEE		
3/28	MISSED DEADLINE FOR 67TH DAY TRANSMITTAL		
	DIED IN COMMITTEE		

HB 575 INTRODUCED BY REHBEIN, ET AL. LC1368 DRAFTER: NISS

PROHIBIT CERTAIN CORPORATIONS, PARTNERSHIPS, ASSOCIATIONS,
COOPERATIVES, AND OTHER ORGANIZATIONS FROM CONTRIBUTING
TO THE SUPPORT OR OPPOSITION OF BALLOT ISSUES

2/17	INTRODUCED		
2/17	FIRST READING		
2/17	REFERRED TO STATE ADMINISTRATION		
2/17	FISCAL NOTE REQUESTED		
2/19	HEARING		
2/20	FISCAL NOTE RECEIVED		
2/20	FISCAL NOTE PRINTED		
2/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/22	2ND READING PASSED	63	36
2/24	MOTION FAILED TO TAKE FROM 3RD READING & PLACE		
	ON 2ND READING	36	60
2/26	3RD READING PASSED	60	40

	TRANSMITTED TO SENATE		
3/04	FIRST READING		
3/04	REFERRED TO STATE ADMINISTRATION		
3/12	HEARING		
3/26	COMMITTEE REPORT—BILL CONCURRED		
4/04	2ND READING CONCURRED	34	16
4/05	3RD READING CONCURRED	34	16

4/08	RETURNED TO HOUSE		
4/10	SIGNED BY SPEAKER		
4/10	SIGNED BY PRESIDENT		
4/10	TRANSMITTED TO GOVERNOR		
4/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 294		
	EFFECTIVE DATE: 04/17/97		

HB 576 INTRODUCED BY COBB, ET AL. LC1399 DRAFTER: PETESCH

CREATE AN ENDOWMENT FOR CHILDREN FUND WITHIN THE
NONEXPENDABLE TRUST FUND TYPE
BY REQUEST OF JOINT SUBCOMMITTEE ON HUMAN SERVICES & AGING

2/17	INTRODUCED		
2/17	FIRST READING		
2/17	REFERRED TO APPROPRIATIONS		
2/17	FISCAL NOTE REQUESTED		
2/21	FISCAL NOTE RECEIVED		
2/21	FISCAL NOTE PRINTED		
3/10	HEARING		
3/12	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/21	2ND READING PASSED	82	17

House BILL NO. 572

Brainard

INTRODUCED BY

Clark ORR Mark Beaudry
A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR SEVERAL LIABILITY FOR MOST TORT ACTIONS; LIMITING JOINT AND SEVERAL LIABILITY TO CERTAIN SPECIFIED TORT ACTIONS; PROVIDING FOR THE EFFECT OF A RELEASE OR OF A COVENANT NOT TO SUE; AMENDING SECTIONS 25-9-411, 27-1-702, 27-1-703, 27-1-719, 28-1-301, AND 28-11-311, MCA; AND PROVIDING CONTINGENT EFFECTIVE DATES AND AN APPLICABILITY DATE."

Wm.E. Boharski

WHEREAS, efforts of the Legislature to amend the comparative negligence statute, which is premised on a modified joint and several liability scheme, have repeatedly been struck down by the Montana Supreme Court; and

WHEREAS, the Montana Supreme Court rulings prohibiting the consideration of fault attributable to nonparties impair the effectiveness of the current modified joint and several liability system in Montana; and

WHEREAS, the Legislature intends that the policy of the state should be a system of comparative fault in which persons are held responsible only to the extent to which they cause or contribute to the harm; and

WHEREAS, the current system of joint and several liability, which apportions all liability only among parties to the action, fails to apportion liability among all tortfeasors according to their equitable share of fault; and

WHEREAS, the Legislature recognizes that public policy favors fair settlements that accurately reflect the liability of settled or released parties; and

WHEREAS, the Legislature is concerned with the present inequitable results of solvent defendants having to pay for the liability of insolvent, immune, or settled parties; and

WHEREAS, the present system of joint and several liability for all tort actions does not reflect the state's policy of liability in proportion to fault; and

WHEREAS, the Legislature recognizes that joint and several liability should be retained for certain situations; and

WHEREAS, at least ten other states have abrogated the doctrine of joint and several liability, except

1 for specific situations; and

2 WHEREAS, the Legislature has the power to alter tort causes of action to promote legitimate state
3 interests.

4 THEREFORE, the Legislature declares that the doctrine of joint and several liability is abolished,
5 except for specific causes of action, and is replaced with a comparative fault system utilizing the principles
6 of several liability.

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9
10 **NEW SECTION. Section 1. Several liability -- purpose -- pleading -- determination -- nonparties.**

11 (1) The purpose of 27-1-703 and this section is to substitute several liability for the former law providing
12 for joint and several liability, except for certain actions. The purpose of several liability is to allocate
13 responsibility based on fault to all parties to an occurrence, rather than only to the parties to the litigation,
14 and to ensure that the liability of each party to an occurrence is allocated in direct proportion to that party's
15 fault.

16 (2) In an action brought as a result of the death of a person or injury to a person or property, the
17 liability of a defendant is several only and is not joint, except as provided in subsection (7). A defendant
18 is liable only for that percentage of damages that is equal to the ratio of defendant's fault to the total fault
19 attributed to all persons involved in the occurrence from which the action arose, including claimants,
20 defendants, and persons not party to the action. A separate judgment must be entered against the
21 defendant for that amount.

22 (3) In determining the percentage of fault of persons who are parties to the action, the trier of fact
23 shall consider the fault of persons not a party to the action, based upon evidence of those persons' fault,
24 that is admissible in evidence. Assessment of fault against a nonparty does not subject the nonparty to
25 liability in the action or any other action and may not be introduced as evidence of liability in any other
26 action.

27 (4) The percentage of fault attributable to parties to the action may total less than 100% if the trier
28 of fact finds that fault contributing to cause the claimant's loss is attributable to other persons.

29 (5) The jury shall return a special verdict, or the judge shall make special findings in the absence
30 of a jury, determining the percentage of fault attributable to each party and determining the total amount

of damages sustained by the claimant.

(6) A defendant shall affirmatively plead comparative fault and identify in the answer or within a reasonable amount of time after filing the answer as determined by the court, each person who the defendant alleges is at fault with respect to the occurrence that is the basis for the action. A defendant who pleads the comparative fault of another has the burden of proving the fault.

(7) Section 27-1-703 applies and this section does not apply to an action arising from:

(a) the concerted acts or omissions of two or more persons;

(b) the act or omission of a person acting as the agent or servant of another; or

(c) an act or omission that violates a state environmental law relating to hazardous or deleterious substances.

(8) For purposes of this section, "fault" means an act or omission that proximately caused or contributed to injury or damages sustained by a person seeking recovery and includes negligence in any of its degrees, contributory negligence, strict liability, and products liability.

NEW SECTION. Section 2. Effect of a release or covenant not to sue. A release or covenant not to sue given to one of two or more persons potentially liable in tort for the same injury, death, damage, or loss:

(1) does not discharge any of the other persons from liability for the person's several pro rata share of liability unless the terms of the release or covenant provide for a discharge of liability;

(2) reduces the aggregate claim against the other persons to the extent of any percentage of fault found by the trier of fact under [section 1] to be attributable to the person to whom the release or covenant was given; and

(3) discharges the person to whom it was given from all liability for contribution.

Section 3. Section 25-9-411, MCA, is amended to read:

"25-9-411. Medical malpractice noneconomic damages limitation. (1) (a) In a malpractice claim or claims against one or more health care providers based on a single incident of malpractice, an award for past and future damages for noneconomic loss may not exceed \$250,000. All claims for noneconomic loss deriving from injuries to a patient are subject to an award not to exceed \$250,000. This limitation applies whether:

1 (i) based on the same act or a series of acts that allegedly caused the injury, injuries, death, or
2 deaths on which the action or actions are based; or

3 (ii) the act or series of acts were by one or more health care providers.

4 (b) If a single incident of malpractice injures multiple, unrelated patients, the limitation on awards
5 contained in subsection (1)(a) applies to each patient and all claims deriving from injuries to that patient.

6 (2) (a) For purposes of the limitation on awards contained in subsection (1), a claimant has the
7 burden of proving separate injuries, each arising from a different act or series of acts. An award or
8 combination of awards in excess of \$250,000 must be reduced to \$250,000, after which the court shall
9 make other reductions that are required by law. If a combination of awards for past and future noneconomic
10 loss is reduced in the same action, future noneconomic loss must be reduced first and, if necessary to reach
11 the \$250,000 limit, past noneconomic loss must then be reduced. If a combination of awards is reduced
12 to \$250,000, a claimant's share of the \$250,000 must be the same percentage as the claimant's share of
13 the combined awards before reduction.

14 (b) For each claimant, further reductions must be made in the following order:

15 (i) first, reductions under 27-1-702; and

16 (ii) ~~second, reductions under 27-1-703; and~~

17 ~~(iii) third~~ second, setoffs and credits to which a defendant is entitled.

18 (3) An award of future damages for noneconomic loss may not be discounted to present value.

19 (4) The \$250,000 limit provided for in subsection (1) may not be disclosed to a jury.

20 (5) As used in this section, the following definitions apply:

21 (a) "Claimant" includes but is not limited to:

22 (i) a person suffering bodily injury;

23 (ii) a person making a claim as a result of bodily injury to or the death of another;

24 (iii) a person making a claim on behalf of someone who suffered bodily injury or death;

25 (iv) the representative of the estate of a person who suffered bodily injury or death; or

26 (v) a person bringing a wrongful death action.

27 (b) "Health care provider" means a physician, dentist, podiatrist, optometrist, chiropractor, physical
28 therapist, or nurse licensed under Title 37 or a health care facility licensed under Title 50, chapter 5.

29 (c) "Malpractice claim" means a claim based on a negligent act or omission by a health care
30 provider in the rendering of professional services that is the proximate cause of a personal injury or

1 wrongful death.

2 (d) "Noneconomic loss" means subjective, nonmonetary loss, including but not limited to:

3 (i) physical and mental pain or suffering;

4 (ii) emotional distress;

5 (iii) inconvenience;

6 (iv) subjective, nonmonetary loss arising from physical impairment or disfigurement;

7 (v) loss of society, companionship, and consortium, other than household services;

8 (vi) injury to reputation; and

9 (vii) humiliation.

10 (e) "Patient" means a person who receives services from a health care provider."

11
12 **Section 4.** Section 27-1-702, MCA, is amended to read:

13 **"27-1-702. Comparative ~~negligence~~ fault -- extent to which contributory ~~negligence~~ fault bars**
14 **recovery in action for damages.** Contributory ~~negligence~~ fault ~~shall~~ does not bar recovery in an action by
15 ~~any a person or his~~ a person's legal representative to recover tort damages for ~~negligence resulting in death~~
16 ~~of a person or injury to a person or property if such negligence~~ the contributory fault was not greater than
17 the ~~negligence~~ fault of the ~~person~~ defendant or the combined ~~negligence~~ fault of all ~~persons against whom~~
18 ~~recovery is sought~~ defendants and nonparties, but ~~any~~ damages allowed ~~shall~~ must be diminished in the
19 proportion to the ~~amount of negligence~~ percentage of fault attributable to the person recovering."
20

21 **Section 5.** Section 27-1-703, MCA, is amended to read:

22 **"27-1-703. Multiple defendants -- determination of liability.** (1) ~~Except as provided in subsections~~
23 ~~(2) and (3), whenever the negligence of a party in any action is an issue~~ In an action referred to in (section
24 1(7)(c)), each party against whom recovery may be allowed is jointly and severally liable for the amount
25 that may be awarded to the claimant but has the right of contribution ~~from any other person whose~~
26 ~~negligence may have contributed as a proximate cause to the injury complained of.~~

27 ~~(2) A party whose negligence is determined to be 50% or less of the combined negligence of all~~
28 ~~persons described in subsection (4) is severally liable only and is responsible only for the amount of~~
29 ~~negligence attributable to that party, except as provided in subsection (3). The remaining parties are jointly~~
30 ~~and severally liable for the total less the amount attributable to the claimant.~~

1 ~~(3)(2)~~ A In an action referred to in [section 1(7)(a) or (7)(b)], a party may be jointly liable for all
2 damages caused by the negligence of another if both acted in concert in contributing to the claimant's
3 damages or if one party acted as an agent of the other.

4 ~~(4)~~ ~~On motion of any party against whom a claim is asserted for negligence resulting in death or~~
5 ~~injury to person or property, any other person whose negligence may have contributed as a proximate~~
6 ~~cause to the injury complained of may be joined as an additional party to the action. For purposes of~~
7 ~~determining the percentage of liability attributable to each party whose action contributed to the injury~~
8 ~~complained of, the trier of fact shall consider the negligence of the claimant, injured person, defendants,~~
9 ~~and third party defendants. The liability of nonparties, including persons released from liability by the~~
10 ~~claimant and persons immune from liability to the claimant, must also be considered by the trier of fact,~~
11 ~~as provided in subsection (6). The trier of fact shall apportion the percentage of negligence of all persons~~
12 ~~listed in this subsection. Contribution must be proportional to the liability of the parties against whom~~
13 ~~recovery is allowed. Nothing contained in this section makes any party indispensable pursuant to Rule 19,~~
14 ~~Montana Rules of Civil Procedure.~~

15 ~~(5)~~ ~~If for any reason all or part of the contribution from a party liable for contribution cannot be~~
16 ~~obtained, each of the other parties shall contribute a proportional part of the unpaid portion of the~~
17 ~~noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution~~
18 ~~from the noncontributing party. A party found to be 50% or less negligent for the injury complained of is~~
19 ~~liable for contribution under this section only up to the percentage of negligence attributed to that party.~~

20 ~~(6)~~ ~~(a) In an action based on negligence, a defendant may assert as a defense that the damages~~
21 ~~of the claimant were caused in full or in part by a nonparty, which may be referred to as a nonparty~~
22 ~~defense.~~

23 ~~(b) In determining the percentage of liability attributable to persons who are parties to the action,~~
24 ~~the trier of fact shall consider the negligence of nonparties, including persons released from liability by the~~
25 ~~claimant and persons immune from liability to the claimant, if a nonparty defense is properly asserted in~~
26 ~~accordance with this subsection (6). A finding of negligence of a nonparty is not a presumptive or~~
27 ~~conclusive finding as to that nonparty for purposes of a prior or subsequent action involving that nonparty.~~

28 ~~(c) The burden of proof as to a nonparty's liability is on the defendant or defendants who~~
29 ~~affirmatively plead the nonparty defense, but this subsection (6) does not relieve the claimant of the burden~~
30 ~~of proving that negligence on the part of the defendant or defendants contributed as a proximate cause to~~

~~the injury of the claimant or alter other proof requirements.~~

~~(d) A nonparty defense must be affirmatively pleaded as a part of the answer. A defendant who gains actual knowledge of a nonparty defense after the filing of that defendant's answer may plead the defense with reasonable promptness, as determined by the trial court, in a manner that is consistent with:~~

~~(i) giving the defendant a reasonable opportunity to discover the existence of a nonparty defense;~~

~~(ii) giving the claimant a reasonable opportunity to defend against a nonparty defense; and~~

~~(iii) giving the claimant a reasonable opportunity, if appropriate, to add the nonparty as an additional defendant to the action before the expiration of the period of limitation applicable to the claim. However, this subsection (iii) does not extend the period of limitation or revive the action if the period of limitation has expired.~~

~~(e) If a defendant asserts a nonparty defense, the defendant shall notify each nonparty who the defendant alleges caused the claimant's injuries, in whole or in part. Notification must be made by mailing the defendant's answer to each nonparty at the nonparty's last known address by certified mail, return receipt requested."~~

Section 6. Section 27-1-719, MCA, is amended to read:

"27-1-719. Liability of seller of product for physical harm to user or consumer. (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to ~~his~~ the user's or consumer's property if:

(a) the seller is engaged in the business of selling such a product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of ~~his~~ the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) ~~Except as provided in this subsection, contributory negligence is not~~ Contributory fault is a

1 defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage
2 caused by a defectively manufactured or defectively designed product. A seller named as a defendant in
3 an action based on strict liability in tort for damages to a person or property caused by a defectively
4 designed or defectively manufactured product may assert the following affirmative defenses against the
5 user or consumer, the legal representative of the user or consumer, or any person claiming damages by
6 reason of injury to the user or consumer:

7 (a) The user or consumer of the product discovered the defect or the defect was open and obvious
8 and the user or consumer unreasonably made use of the product and was injured by it.

9 (b) The product was unreasonably misused by the user or consumer and ~~such~~ the misuse caused
10 or contributed to the injury.

11 (6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be
12 applied in accordance with the principles of comparative ~~negligence~~ fault set forth in 27-1-702 and [section
13 1]."

14
15 **Section 7.** Section 28-1-301, MCA, is amended to read:

16 "28-1-301. **Types of obligations involving several persons.** Except as provided in 27-1-703 and
17 [section 1], an obligation imposed upon several persons or a right created in favor of several persons may
18 be:

19 (1) joint;

20 (2) several; or

21 (3) joint and several."

22
23 **Section 8.** Section 28-11-311, MCA, is amended to read:

24 "28-11-311. **Person indemnifying liable jointly and severally.** Except as may be otherwise provided
25 in 27-1-703 and [section 1], ~~one a person~~ who indemnifies another person against an act to be done by
26 the latter is liable jointly with the person indemnified and separately to every person injured by ~~such the~~
27 act."

28
29 **NEW SECTION. Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are
30 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its

1 applications, the part remains in effect in all valid applications that are severable from the invalid
2 applications.

3
4 NEW SECTION. **Section 10. Applicability.** [This act] applies to causes of action that arise after
5 [the effective date of this act].

6
7 NEW SECTION. **Section 11. Contingent effective dates.** (1) [This act] is effective on May 11,
8 1997, if ___ Bill No. ___ [LC1155] is not passed and approved.

9 (2) If ___ Bill No. ___ [LC1155] is passed and approved and is invalidated or is found to be
10 unconstitutional by the Montana supreme court, [this act] is effective on the day after the effective date
11 of the invalidation or of the finding of unconstitutionality.

12 -END-

HOUSE JUDICIARY

Page 7

BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE ----- REREFERRED ---- DATE READ

HB0522	CLARK, ROBERT		REVISE LAW OF LIBEL AND SLANDER						
	2/11					VOTE:			
HB0528	WELLS, JACK		MONTANA FAMILY RIGHTS ACT						
	2/12	2/18		TABLED ON	02/20	VOTE: 15-5			
HB0540	ORR, SCOTT		GENERALLY REVISE LAWS REQUIRING CRIMINALS TO MAKE RESTITUTION						
	2/13	2/18		PASS AS AMENDED	02/20	VOTE: 19-0			2/21
HB0553	STOVALL, JAY		AWARD ATTORNEY FEES TO PREVAILING PARTY IN MOST CIVIL SUITS						
	2/14	2/18		PASS AS AMENDED	02/20	VOTE: 14-6			2/21
HB0571	BEAUDRY, HALEY		REVISE JOINT AND SEVERAL LIABILITY LAWS; COMPARATIVE NEGLIGENCE						
	2/17	2/19		DO PASS	02/20	VOTE: 13-7			2/20
HB0572	ANDERSON, SHIELL		REVISE JOINT AND SEVERAL LIABILITY LAWS; TORT ACTIONS						
	2/17	2/19		PASS AS AMENDED	02/20	VOTE: 15-5			2/21
HB0577	MOLNAR, BRAD		REVISE PERSON UNDER 21 AND IN POSSESSION OF ALCOHOL LAW						
	2/18	2/19		DO PASS	02/20	VOTE: 17-3			2/20
HJ0005	KITZENBERG, SAM		INTERIM STUDY OF THE FORENSIC SCIENCES DIVISION OF THE MT DEPT. OF JUSTICE						
	1/11	1/21		TABLED ON	01/24	VOTE: 20-0			
HJ0019	MERCER, JOHN		INTERIM STUDY ON CORRECTIONAL STANDARDS						
	2/07	2/17		PASS AS AMENDED	01/27	VOTE: 15-2			2/18
HJ0028	CURTISS, AUBYN		FEDERAL PEACE OFFICER COOPERATION WITH MONTANA SHERIFFS						
	2/18	2/19		PASS AS AMENDED	02/19	VOTE: 15-2			2/19
SB0016	HALLIGAN, MIKE		MANDATORY DISCLOSURE OF ASSETS & LIABILITIES IN DISSOLUTION/SEPARATION						
	1/20	3/06		CONCUR	03/16	VOTE: 14-3			3/07
SB0024	MCNUTT, WALTER		ADOPT LATEST VERSION OF UCMJ AND FEDERAL REGULATIONS						
	1/13	1/30		CONCUR	01/30	VOTE: 16-0			1/31

tw

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on February 19, 1997, at 8:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 571, HB 572, HB 577, HJ 28
POSTED 2/18/97
Executive Action: HJ 28 DO PASS AS AMENDED
HB 429 DO PASS AS AMENDED
HB 416 TABLED
HB 323 DO PASS

HEARING ON HB 571

Opening Statement by Sponsor: REP. HALEY BEAUDRY

{Tape: 1; Side: A; Approx. Time Count: 2.3; Comments: This set of minutes was recorded on 90-minute tapes.}

Proponents' Testimony:

CHRIS GALLUS, Montana Chamber of Commerce/Montana Liability
Commission (MCC/MLC)

{Tape: 1; Side: A; Approx. Time Count: 7.6}

PAGE DRINGMAN, Montana Municipal Insurance Authority (MMIA)

{Tape: 1; Side: A; Approx. Time Count: 12.4}

ALEC HANSEN, League of Cities and Towns

{Tape: 1; Side: A; Approx. Time Count: 24.6; Comments: This
witness did not sign in.}

GREG JACKSON, Montana Association of Counties (MAC)

{Tape: 1; Side: A; Approx. Time Count: 26.7}

CARL SCHWEITZER, Montana Contractors' Association (MCA)

{Tape: 1; Side: A; Approx. Time Count: 27.3}

JOHN KEMBEL, City of Billings

{Tape: 1; Side: A; Approx. Time Count: 27.7}

BARBARA RANF, U. S. West Communications (USWC)

{Tape: 1; Side: A; Approx. Time Count: 28.0}

Opponents' Testimony:

RUSSELL HILL, Montana Trial Lawyers Association (MTLA) EXHIBIT 1

{Tape: 1; Side: A; Approx. Time Count: 28.3-Tape 1; Side B; 2.2}

Questions From Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Count: 2.6 - 23.3}

Closing by Sponsor: REP. BEAUDRY

{Tape: 1; Side: B; Approx. Time Count: 23.4}

HEARING ON HB 572

Opening Statement by Sponsor: REP. SHIELL ANDERSON

{Tape: 1; Side: B; Approx. Time Count: 27.8}

Proponents' Testimony:

PAGE DRINGMAN, MMIA

{Tape: 1; Side: B; Approx. Time Count: 33.4}

CHRIS GALLUS, MCC/MLC

{Tape: 1; Side: B; Approx. Time Count: 40.0}

ALEC HANSEN, League of Cities and Towns

{Tape: 2; Side: A; Approx. Time Count: 0.5}

NATHAN TUBERGER, City of Billings

{Tape: 2; Side: A; Approx. Time Count: 1.4; Comments: This witness did not register with the Commissioner of Political Practices and his name is illegible on sign-in sheet as well as inaudible on tape so may be misspelled.}

JACQUELINE LENMARK, American Insurance Association (AIA)

{Tape: 2; Side: A; Approx. Time Count: 1.5}

Opponents' Testimony:

RUSSELL HILL, MTLA

{Tape: 2; Side: A; Approx. Time Count: 2.5}

Questions From Committee Members and Responses:

{Tape: 2; Side: A; Approx. Time Count: 9.4 - 22.0}

Closing by Sponsor: REP. ANDERSON

{Tape: 2; Side: A; Approx. Time Count: 22.1}

HEARING ON HB 577

Opening Statement by Sponsor: REP. BRAD MOLNAR

{Tape: 2; Side: A; Approx. Time Count: 25.3}

Proponents' Testimony:

REP. COCCHIARELLA

{Tape: 2; Side: A; Approx. Time Count: 28.5}

EMANUEL HARTMAN, Laurel High School Student

EXHIBITS 2 and 3

{Tape: 2; Side: A; Approx. Time Count: 32.2}

VANESSA HOFFMAN, Laurel High School Student

{Tape: 2; Side: A; Approx. Time Count: 35.9}

RYAN HERSEL, Powell County High School Student

{Tape: 2; Side: A; Approx. Time Count: 37.6}

REP. LIZ SMITH

{Tape: 2; Side: A; Approx. Time Count: 38.9}

Opponents' Testimony:

COL. CRAIG REAP, Montana Highway Patrol

{Tape: 2; Side: A; Approx. Time Count: 42.1}

Informational Testimony:

JERRY WILLIAMS, Montana Police Protective Association

{Tape: 2; Side: B; Approx. Time Count: 0.3}

Questions From Committee Members and Responses:

{Tape: 2; Side: B; Approx. Time Count: 3.9-30.8}

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on February 20, 1997, at 7:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Excused: Rep. Boharski was excused until 8:00 AM.

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Executive Action: DO PASS:
HB 159, HB 299, HB 571, HB 577
DO PASS AS AMENDED:
HB 276, HB 303, HB 306, HB 453
HB 540, HB 553, HB 572
TABLED:
HB 270, HB 454, HB 528

Motion/Vote: REP. WYATT moved to amend HB 571.

EXHIBIT 7

The motion failed by voice vote.

{Tape: 3; Side: B; Approx. Time Count: 10.0-11.1; Comments:
There was brief discussion for clarification before the vote.}

Vote: The motion carried to pass HB 571 13 - 7; REPS. WYATT, HURDLE, MC CULLOCH, PEASE, SANDS, ELLINGSON and KOTTEL voting no.
{Tape: 3; Side: B; Approx. Time Count: 11.5}

EXECUTIVE ACTION ON HB 572

Motion: REP. ANDERSON moved HB 572 DO PASS.

{Tape: 3; Side: B; Approx. Time Count: 12.6}

Discussion:

{Tape: 3; Side: B; Approx. Time Count: 13.1 - 15.7}

Motion: REP. KOTTEL moved to amend HB 572 to include a non-severability clause.

{Tape: 3; Side: B; Approx. Time Count: 15.8}

Vote: The motion carried 15 - 4; REPS. HANSON, ANDERSON, GRIMES and CLARK voting no. (REP. MC CULLOCH voted aye by proxy.)

Motion/Vote: REP. ANDERSON moved HB 572 DO PASS AS AMENDED. The motion carried 15 - 5; REPS. SANDS, WYATT, ELLINGSON, HURDLE and MC CULLOCH voting no. (REP. MC CULLOCH voted no and REP. TASH voted aye by proxy.)

{Tape: 3; Side: B; Approx. Time Count: 22.4}

EXECUTIVE ACTION ON HB 553

Motion: REP. AHNER moved HB 553 DO PASS.

{Tape: 3; Side: B; Approx. Time Count: 23.8}

Motion: REP. ANDERSON moved to amend HB 553 by changing "must" to "may."

{Tape: 3; Side: B; Approx. Time Count: 24.4}

Discussion:

{Tape: 3; Side: B; Approx. Time Count: 24.8 - 36.0}

Vote: The motion failed by tie roll call vote.
(REP. SANDS voted no by proxy.)

EXHIBIT 8

Motion/Vote: REP. MC GEE moved REP. STOVALL'S amendments to insert "in the trial or other initial proceeding and to the prevailing party in any appeal" on line 14, page 1. The motion carried 17 - 3; REPS. ELLINGSON, HURDLE, and BERGMAN voting no. (REP. BERGMAN voted no by proxy.)

Motion: REP. MD GEE moved HB 553 DO PASS AS AMENDED.

{Tape: 4; Side: A; Approx. Time Count: 1.7}



HOUSE STANDING COMMITTEE REPORT

February 20, 1997

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 572 (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, line 6.

Following: "SUE;"

Insert: "PROVIDING THAT NO AMOUNT OF CONTRIBUTORY NEGLIGENCE BARS RECOVERY; "

2. Page 5, lines 16 through 18.

Strike: "if" on line 16 through "nonparties" on line 18

3. Page 8, line 29 through line 2 of page 9.

Strike: section 9 of the bill in its entirety

Insert: "NEW SECTION. Section 9. Nonseverability. It is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid."

-END-

mm
Committee Vote:
Yes 15, No 5.

401615SC.Hgd

14

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

7 AM

ROLL CALL

DATE 2/20/97

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER	✓		
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI <i>8 AM</i>	✓		
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON	✓		
REP. DUANE GRIMES	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR	✓		
REP. GERALD PEASE	✓		
REP. DIANE SANDS	✓		
REP. LIZ SMITH	✓		
REP. LOREN SOFT	✓		
REP. BILL TASH	✓		

SENATE JUDICIARY

Page 5

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

HB0429	3/03	3/21	TABLED ON 03/21	VOTE:9-1		
HB0479	TUSS, CARLEY	2/20	3/13	ALLOW PERMANENT EXCLUSION FROM JURY DUTY FOR CHRONICALLY INCAPACITATED	CONCUR AS AMENDED	VOTE:10-0 3-13 3/15
HB0495	MILLS, NORM	2/20	3/18	REVISE DISCRIMINATION EXCEPTION FOR OLDER PERSON HOUSING	CONCUR	VOTE:10-0 3-18 3/19
HB0534	WELLS, JACK	3/04		MAKE STATE LIABLE FOR INTEREST/ATTORNEY FEES IN JUDGMENT INVOLVING CONTRACT	VOTE:	STATE ADMIN.
HB0540	ORR, SCOTT	3/04	3/18	GENERALLY REVISE LAWS REQUIRING CRIMINALS TO MAKE RESTITUTION	CONCUR	VOTE: 10-0 3-18 3/19
HB0553	STOVALL, JAY	3/04	3/21	AWARD ATTORNEY FEES TO PREVAILING PARTY IN MOST CIVIL SUITS	TABLED ON 03/26	VOTE:8-2
HB0571	BEAUDRY, HALEY	3/04	3/20	REVISE JOINT AND SEVERAL LIABILITY LAWS; COMPARATIVE NEGLIGENCE	CONCUR	VOTE:7-3 3-27 3/28
HB0572	ANDERSON, SHIELL	3/04	3/20	REVISE JOINT AND SEVERAL LIABILITY LAWS; TORT ACTIONS	CONCUR AS AMENDED	VOTE:7-3 3-27 3/28
HB0577	MOLNAR, BRAD	3/04	3/14	REVISE PERSON UNDER 21 AND IN POSSESSION OF ALCOHOL LAW	CONCUR	VOTE: 10-0 3-14 3/15
HJ0019	MERCER, JOHN	3/03	3/14	INTERIM STUDY ON CORRECTIONAL STANDARDS	CONCUR	VOTE: 10-0 3-14 3/15
HJ0028	CURTISS, AUBYN	3/03	3/14	FEDERAL PEACE OFFICER COOPERATION WITH MONTANA SHERIFFS	CONCUR AS AMENDED	VOTE: 7-3 3-14 3/17
SB0002	HOLDEN, RIC	12/27	1/07	REVISE, CLARIFY, AND CONSOLIDATE LAWS GOVERNING WORK PROGRAMS FOR INMATES	PASS AS AMENDED	VOTE: 1-14 1/15
	CHRISTIAENS, CHRIS			CRIMINALIZE POSSESSION OF WEAPON BY PERSON IN YOUTH DETENTION FACILITY		

2

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE CRIPPEN**, on March 20, 1997, at 9:07 A.M., in Senate Judiciary Room, Room 325.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 571, 3/4/97
HB 572, 3/4/97
HB 264, 3/4/97
Executive Action: None

HEARING ON HB 571

Sponsor: REP. HALEY BEAUDRY, HD 35, Butte

Proponents: Chris Gallus, Montana Chamber of Commerce and
Montana Liability Coalition
Page Dringman, Montana Municipal Insurance
Authority
Alec Hanson, Montana League of Cities and Towns
and MMIA
Carl Sweitzer, Montana Contractors Association
Brad Griffin, Montana Retail Association and the
Montana Hardware and Implement Association
Jim Kimball, City of Billings

SEN. HOLDEN asked why plaintiffs agree to take early settlements and then pursue claims against other parties?

Mr. Cameron stated that goes on a case-by-case basis. He has never been involved in a case in which the primarily responsible person was let out of the lawsuit by paying a small amount to the plaintiff.

SEN. HOLDEN felt that a drunk driver with no insurance could be primarily responsible for the entire accident but another driver involved in the same accident is put on the hook because he has a liability policy.

Closing by Sponsor:

{Tape: 1; Side: b; Approx. Time Count: 10:04}

REP. BEAUDRY stated that in a small town there was an accident where a two year old was left in a car which was running. The person who pulled up next let her two-year-old out of the car. He was standing on the lawn of the school. The two-year-old in the car which was running, pulled the car into gear and pinned the boy against the wall. The parent of the severely injured boy, settled with the responsible party for the car which was left running. The settlement was \$20,000. The injuries to the boy are in the millions. The school is going to pay the money based on it's responsibility. That money will come from the people in the community where the school is located. The school's lawyer will be able to deduct \$20,000. If the school is 10% liable, under this law it would be responsible for 10% of a million dollar award. Today, the school is responsible for a million dollars minus the \$20,000 which has already been paid. If the person in the empty chair wants to sit in the chair, he is welcome to do that but the amount of his settlement will not change no matter what the jury finds. If you are 20% responsible, you pay 20%.

HEARING ON HB 572

{Tape: 1; Side: b; Approx. Time Count: 10:10}

Sponsor: REP. SHEILL ANDERSON, HD 25, Livingston

Proponents: Page Dringman, Montana Municipal Insurance Authority
Chris Gallus, Montana Chamber of Commerce and Montana Liability Coalition
Alec Hanson, League of Cities and the Montana Municipal Insurance Authority
Tom Harrison, Montana Society of CPAs
Dwight Easton, Farmers Insurance
Jim Kimball, City of Billings
Russ Ritter, Washington Corporations
John Schontz, Montana Association of Realtors

Don Allen, Montana Wood Products Association
Barbara Ranf, U S West Communications

Opponents: Robert Cameron, Lawyer
Russell Hill, Montana Trial Lawyers
Association
John Sullivan, Montana Defense Trial Lawyers
Jackie Lenmark, American Insurance Association

Opening Statement by Sponsor:

REP. SHEILL ANDERSON, HD 25, Livingston, introduced HB 572. Joint and several liability allows too much responsibility to people who are left in an action. This unfairly tags them with damages. The last page of this bill explains how this bill would come into play in the event the previous bill fails to pass the legislature or is found to be unconstitutional by the court. If it fails to pass the legislature, this bill would become the vehicle used. If both bills pass and REP. BEAUDRY's bill is found to be unconstitutional by the court, this bill would have an immediate effective date at that time. If any part of this bill is found to be unconstitutional, we would revert to current law. House Bill 572 establishes a scheme of several liability only.

On page 1, lines 20-22, it states that where the legislature intends that the policy of the state should be a system of comparative fault in which persons are held responsible only to the extent in which they cause or contribute to the harm.

Page 2, lines 4 and 5, notes that at least 10 other states have abrogated the doctrine of joint and several liability except for specific situations. Lines 27 and 28 state that in determining the percentage of fault to the persons who are parties to the action, the trier of fact shall consider the fault of persons not a party to the action based upon evidence of those person's fault which is admissible in evidence.

Page 3 states that the percentage of fault attributable to parties to the action may total less than 100% if the trier of fact finds that fault contributing to cause the claimant's loss is attributable to other persons. Lines 10 thru 14, note that we retain joint and several liability when there is a concerted act or omission of two or more persons or the act or omission of a person acting as an agent or servant of another or in those cases where an act or omission violates the state environmental law relating to hazardous or deleterious substances.

Page 5 was amended in House Judiciary to allow for a pure comparative scheme. If a defendant is 5% at fault, he can be held responsible for 5%. Currently, if the plaintiff's fault is greater than the defendant's fault, the plaintiff cannot recover. This would provide a pure comparative.

Proponents' Testimony:

Page Dringman, Montana Municipal Insurance Authority, stated that if HB 571 is found unconstitutional, we are at a point where defendants will pay 100% of damages regardless of their liability. Other states have repealed the doctrine of joint and several liability. There is a case involving Disney World wherein a woman was injured while she and her fiance were driving bumper cars. The jury determined that her fiance was 85% at fault, she was 14% at fault and Disney World was 1% at fault. The state law did not allow for allocating fault to a settled party. She released her fiance from liability. Disney World, with 1% liability, paid 86% of the damages. House Bill 572 allows that the parties pay to the extent to which they are liable.

States have repealed joint and several liability in several ways. Some bills have retained joint and several liability for certain causes of action where people act in concert, one person acts as an agent, or there are environmental damages. Some states have kept joint and several for economic damages, but eliminated it for non-economic damages. Some of the states which have repealed joint and several liability are Alaska, Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Mississippi, Nebraska, Nevada, New Mexico, North Dakota, Oregon and Utah.

Chris Gallus, Montana Chamber of Commerce and Montana Liability Coalition, rose in support of HB 572. EXHIBIT 5

Alec Hanson, League of Cities and the Montana Municipal Insurance Authority, spoke in support of HB 572. He stated that cities and towns have two problems under current law. The first problem is their enormous exposure. Seventy percent of the traffic in the state of Montana travels over city and town streets and county roads. They have police and fire departments, emergency medical services, water and sewer departments.

The second part of the problem is responsibility. They have created their own insurance program which is financed out of taxpayer dollars. The statutes for the State of Montana provide for a judgment levy. Several years ago, Plentywood was hit with a judgment for which they did not have insurance. The taxpayers in Plentywood paid 35 mills for three years to pay off the lawsuit. They are trying to apportion the cost of their responsibility so they pay their fair share for the trouble which they cause and not much more.

Tom Harrison, Montana Society of CPAs, stated he was present to offer a proposed amendment. He referred to section 1 (2), which uses the language "injury to a person or property."

{Tape: 2; Side: a; Approx. Time Count: 10:24}

A New York court included economic damages in Lippies v. Atlantic Bank. In Federal Savings and Loan v. Huff, the Kansas court construed that economic loss was not included. His amendment would be to insert the words "and economic loss" after the word "property".

Dwight Easton, Farmers Insurance, offered an amendment, EXHIBIT 6. He referred to page 5, line 20, following the word "property" he would add "if the contributory fault was not greater than the fault of the defendant or the combined fault of all defendants and non-parties." Pure comparative negligence radically changes existing tort law in Montana. Present law requires a finding of a claimant to be less than 50% at fault in order to recover. Any award of damages is then reduced by the amount of fault attributed to the claimant and by the amount of fault attributed to any third party which might be involved. House Bill 572 completely abandons the requirement that the claimant be 50% or less at fault. Instead, it institutes a system where the claimant may be 90% at fault but could still sue the other party for the remaining 10%. It would permit persons who are the principal cause of their own injury to sue for and receive damages from those substantially less at fault or merely slightly responsible. He asked that HB 572 be amended back to its original introduced form. If this cannot be done, he asked that the committee give a do not pass recommendation to the bill.

Jim Kimball, City of Billings, rose in support of HB 572.

Russ Ritter, Washington Corporations, rose in support of HB 572.

John Schontz, Montana Association of Realtors, stated they support the bill as originally drafted.

Don Allen, Montana Wood Products Association, rose in support of HB 572 and HB 571.

Barbara Ranf, U S West Communications, stated they support the bill in its current form.

Opponents' Testimony:

Robert Cameron, Lawyer, stated HB 572 is unconstitutional and bad public policy. This bill is flawed by requiring the trier of fact to consider the fault of persons not parties to the action. Under the current system, no innocent deep pocket is being stuck with any liability. The only deep pockets stuck with liability are the ones which a jury has found to be negligent or otherwise at fault. Senate Bill 212, which was passed in the 1995 Legislature, created the non-party defense. EXHIBIT 7

Russell Hill, Montana Trial Lawyers Association, referred the committee to his written testimony, EXHIBIT 3. The issue is to make the Supreme Court rule both bills to be unconstitutional. Newville dealt with a settled party. The Plumb case did not

involve a settled party. The Supreme Court struck down the portions of the law which refer to non-party defenses. House Bill 572 may be contingent effective decades from now. The orphan's share settles on the plaintiff. Until 1997, a plaintiff could sue any deep pocket and receive the entire recovery from that defendant and that defendant had no right of contribution from other defendants. The evolution of joint and several in contribution has been to favor deep pocket defendants so they can pull in contribution from other defendants. This bill retains the dollar credit rule.

John Sullivan, Montana Defense Trial Lawyers, stated they were not opposed to the entire bill. They are concerned about the amendment made by **REP. BOHARSKI** in the House Judiciary Committee. That amendment is in section 4 and would create a pure comparative fault system.

He presented three propositions. Proposition no. 1 is that the slightest fault by the plaintiff absolutely bars the plaintiff's recovery. Proposition no. 2 is that no amount of fault by the plaintiff bars the plaintiff's recovery. This would mean that in all cases the plaintiff wins something. Proposition 3 is if the plaintiff is 50% or more at fault, the plaintiff cannot recover. This is the balanced approach.

Jackie Lenmark, American Insurance Association, stated they are opposed only to the above-mentioned amendment which was put on in the House Judiciary Committee. Referring to the pure comparative negligence doctrine, she talked about a drunk driver who went by a stop sign and hit a pickup travelling 60 mph. The drunk who was driving a sub compact was broadsided by the pickup. His injuries are approximately \$500,000. The jury sets the drunk's negligence at 95%. He is the plaintiff. The negligence of the pickup driver is 5%. He would have to pay the drunk, \$25,000 in damages.

Pure comparative negligence rewards the wrongdoer for his wrongs and punishes the innocent victim. It conflicts with the public's sense of justice. Nearly all of the 30 states with modified comparative negligence have adopted it through legislation which is influenced by the public.

Pure comparative negligence raises insurance costs because every party recovers. It also encourages litigation.

They support modified comparative negligence and pure several liability under the comparative negligence scheme. A party is only responsible for the amount of their own fault and plaintiff cannot recover against that party unless plaintiff's negligence is less than that party.

Questions From Committee Members and Responses:

SEN. DOHERTY asked why there was a non-severability clause on the bill?

REP. ANDERSON explained that it was put on because they did not want parts of the bill to be changed to benefit one party.

SEN. DOHERTY stated that the old language was that contributory negligence was not a defense and now contributory fault is a defense. In a strict products liability case, why would we want this language in the bill?

Ms. Dringman clarified that this was added after looking at other states and how "fault" is defined. Page 3, section 1 (8) states that fault means an act or omission that proximately caused or contributed to injury or damages sustained by a person seeking recovery and includes negligence in any of its degrees, contributory negligence, strict liability and products liability. Contributory negligence has not been a defense to products liability in the past. The defenses have been misuse of a product or an obvious defect. Some people believe that even if you have a products liability case and someone negligently installed the product, why should the manufacturer of that product not be able to compare his or her share of liability with the person who acted negligently in installing or using the product aside from just the misuse or defective condition.

SEN. DOHERTY presented the scenario wherein he represented a housing authority. A furnace was installed in the house, one of the valves opened when it shouldn't and death occurred due to carbon monoxide poisoning. As a representative of the housing authority, he would be able to go after the manufacturer, and the manufacturer would be able to go after the fault of the housing authority which installed the allegedly defective furnace. This doesn't go to the plaintiff. This would be a conflict between the potential tortfeasors.

Ms. Dringman stated the housing authority, as installer, could allege the fault of the manufacturer. If a plaintiff is bringing a case against the manufacturer for damages, the manufacturer could allege that the installation was a contributing fault.

SEN. DOHERTY commented that the contingent effective date was pretty creative. If the other bill passes and is eventually held unconstitutional, this bill would then go into effect. The Supreme Court needs to have a case presented, there needs to be facts raised, this could take one to thirty years to occur. Why wouldn't we simply come back to the next legislature and deal with the problem? There have been special sessions called to deal with the injustices of the Supreme Court.

REP. ANDERSON explained that they have tried time and again to address the empty chair problem which SB 212 attempted to

address. He likes the scheme of several liability. The Legislature will let the court know their good faith intent.

SEN. HOLDEN asked Ms. Lenmark if she agreed with Mr. Shannahan's amendment?

Ms. Lenmark stated she would support the amendment.

SEN. DOHERTY asked REP. ANDERSON if he opposed the amendment to strip the comparative fault language out of the bill? If your argument is that everyone needs to be responsible for the percentage of fault which they create, you are left with comparative fault.

REP. ANDERSON commented that the people who would like to have the amendment stripped have a good point in that it will increase litigation. He felt that SEN. DOHERTY made a good point in arguing that each party should be responsible for their exact percent, but that would leave it in a pure comparative sense. That's a policy call.

SEN. BISHOP asked Mr. Hill if there was any way to carry out the intent of the legislature and not have the bill declared unconstitutional by the court?

Mr. Hill stated that they are right back where they were two years ago. The only way the legislature can do what it wants to do, which is to make sure than no one's allocation of fault is affected by an escaping settling party, is to make sure that when someone settles they are still liable for contribution or they do not settle. There is a difference in allocating fault and then going after contribution among all the defendants. If the legislature does not wish to deal with that problem, then it is impossible to insure there will be both settlement and absolute allocation of all at-fault parties.

{Tape: 2; Side: b; Approx. Time Count: 11:00}

SEN. BISHOP asked Mr. Cameron what he was referring to when he talked about coming into court with clean hands?

Mr. Cameron explained the clean hands doctrine applies in principles involving equity disputes. His point was that a truly innocent deep pocket has nothing to fear under current law.

Closing by Sponsor:

REP. ANDERSON commented that Mr. Harrison's amendment was a good amendment and he encouraged the committee to add it. Referring to severability, he didn't want all the severable, several schemes unconstitutional except for the pure comparative negligence. REP. KOTTEL presented the amendment for a pure comparative scheme and then also offered the non-severability amendment.

If the committee feels it is fair for the person 51% responsible for an incident being the only person in a trial and all the other defendant's evidence being inadmissible, and that person pay 100% of the damages, then they should not pass HB 571 or HB 572. The plaintiff benefits under current law. If the committee wants a party to pay only the percent contributed to an incident, then the committee should pass this bill.

HEARING ON HB 264

Sponsor: REP. BRAD MOLNAR, HD 22, Laurel

Proponents: Allen C. McMillan, Superintendent of Schools,
Laurel
REP. ELLEN BERGMAN, HD 4, Miles City
Mike McKota, School Administrator, Harlem

Opponents: Craig Anderson, Chief Probation Officer, Seventh
Judicial District
Allen Horsfall, Jr., Western Montana Regional
Juvenile Detention Center
David Gates, Bozeman School Board
Judith B. Herzog, Citizen
Toni Jenson, Montana Association of Homes and
Services for Children
Nate Schweber, Youth Justice Council
Bob Runkel, Director of Special Education of
Public Instruction
Eric Feavor, Montana Federation of Teachers and
Montana Education Association
Candy Wimmer, MBCC
Bob Cooper, Executive Director for Montana Youth
Homes
Janey McCauley, Executive Director of Montana
Community Partners
Mary Alice Cook, Children and Families
Sally Stanzberry, Missoula Youth Homes

Opening Statement by Sponsor:

REP. BRAD MOLNAR, HD 22, Laurel, introduced HB 264. This bill passed the House by a two to one margin. If a student is moved from one school district to another and has drug or criminal issues in his life, they will inform the school as to the issues and the school then decides if they will accept that student up to and including the levels allowed by the federal government. The other part of the bill deals with an offense which could be a status offense. The juvenile probation officer may overlook the first offense, but after that he needs to inform the school and the school may take administrative action pursuant to their rules. Schools can use a point system and expel the student. He presented a letter from Neal J. Christensen, Counselor, Helena High School, EXHIBIT 8.

House Bill 572

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 5

DATE 3/20/97

FILE NO. HB 572

* House Bill 572 repeals joint and several liability for most tort causes of action and replaces the joint and several liability scheme with **several** liability only.

* HB 572 takes effect on passage, if HB 571 is not passed and approved. However, if both HB 571 and 572 are passed and approved, HB 572 does not take effect unless HB 571 is struck down.

* HB 572 represents a **fundamental** change in our liability system but is necessary if the doctrine of modified joint and several liability is rendered meaningless by court decisions. Therefore, if it is impossible under a modified joint and several liability scheme to allocate liability to parties who caused the accident but are not parties to the suit, the state of Montana needs a liability scheme that allocates liability on the basis of fault.

* HB 572 declares that it is the policy of the state of Montana that **each person be held responsible only to the extent of his or her individual fault.**

* HB 572 would permit the trier of fact to consider the fault of all parties to an **occurrence** for the purpose of determining the fault of any party to the **action**. For example, a car accident involves three persons, the driver and passenger in Vehicle #1 and the driver of Vehicle #2. The passenger is injured through the negligence of both drivers. However, the passenger is related to the driver of Vehicle #1 and releases Driver #1 from liability. Passenger then sues the driver of Vehicle #2. The Driver #2 may produce evidence of the fault of Driver #1 and a jury or judge may determine that, based on evidence introduced by Driver #2, Driver #2 is only 20% liable for the accident. The jury can allocate only this 20% to Driver #2 and the plaintiff is entitled to recover only the dollar equivalent of that 20% share of liability.

* HB 572 allows a comparison of fault for tort actions alleging negligence or gross negligence, as well as to tort causes of action for products liability and strict liability.

* HB 572 allows a comparison of fault with all parties to an occurrence, including immune parties, settled or released parties, and parties not subject to the jurisdiction of the court.

* HB 572 specifically **retains joints and several** liability for 3 situations:

- (1) one person acting as the agent of another;
- (2) two persons acting in concert; and
- (3) violations of state environmental law.

* HB 572 **does not affect** joint and several liability in other causes of action, such as joint and several liability for business entities, corporate liability, negotiable instruments, indemnification agreements, or breach of contract.

MMUA

MT Chamber

March 20th 1997

Mr. Chairman, Senator Crippen and Members of the Senate Judiciary Committee:

Following is an Amendment to the Second Reading version of HB 572 which is offered on behalf of Farmers Insurance Group:

1. Page 5, line 20

Following: "property"

Insert: "IF THE CONTRIBUTORY FAULT WAS NOT GREATER THAN THE
FAULT OF THE DEFENDANT OR THE COMBINED FAULT OF
ALL DEFENDANTS AND NONPARTIES,"

Discussion: The Second reading copy of the bill as presented to you was amended to describe a legal concept that is known as "Pure Comparative Negligence". This concept radically changes the existing tort law of Montana. Present law requires a finding that claimants must be less than 50% at fault themselves in order to recover anything at all. Any award of damages is then reduced by the amount of the fault attributable to the claimant and by the amount of fault attributable to any third party which may be involved.

HB 572 as now written, completely abandons the requirement that the claimant, be less than 50% at fault. Instead it institutes a system where a claimant might be 90% at fault but could still sue the other parties for the remaining 10%. It would permit persons who are themselves the principal cause of their own injury to sue for and receive damages from those substantially less at fault or merely slightly responsible.

The economic effect of the radical changes now contained in HB 572 should be apparent. We respectfully request that you amend HB 572 back to its introduced form. However, if you find that this can't be done, you should give HB 572 a "DO NOT PASS".

Ward Shanahan
for Farmers Insurance Group
33 South Last Chance Gulch
P.O. Box 1715
Helena, MT. 59624
Tel: 406-442-8560

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 Governor

March 20, 1997

Sen. Bruce Crippen, Chair
 Senate Judiciary Committee
 Room 325, State Capitol
 Helena, MT 59624

RE: House Bill 571/House Bill 572

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to both HB 571 and HB 572, which reinstitute nonparty defenses that MTLA believes are:

- (1) unconstitutional; and
- (2) terrible disincentives to voluntary, negotiated settlement of lawsuits and terrible public policy.

HB 571 and HB 572 are unconstitutional. Neither bill cures the constitutional defect identified in both *Newville* and *Plumb* when plaintiffs were required to present not only their own cases but also the cases of nonparty defendants. As the Montana Supreme Court emphasized in *Plumb*:

"As noted in *Newville*, 267 Mont. at 252, 883 P.2d at 802, 'there is no reasonable basis for requiring plaintiffs to examine jury instructions, marshal evidence, make objections, argue the case, and examine witnesses from the standpoint of unrepresented parties,' and requiring the plaintiff's attorney to serve in such a dual capacity is actually antithetical to his or her primary obligation, which is to represent the plaintiff by proving the plaintiff's case."

Essentially, proponents of both HB 571 and HB 572 ask this Legislature--again, but now twice at once--to presume that the Montana Supreme Court made a mistake in reviewing previous nonparty legislation. In *Newville*, for example, the Montana Supreme Court "struck from that part of Sec. 27-1-703(4), MCA (1987), the language which allowed assignment of liability to 'persons released from liability by the claimant' as well as all other nonparty defendants. Likewise, in *Plumb* the Montana Supreme Court expressly

included "persons released from liability by the claimant" among:

"the offending portions of Sec. 27-1-703, MCA (1995) [which] violate the right of substantive due process guaranteed to Roberta and Martin Plumb and Dr. Timothy Adams by the Fourteenth Amendment to the United States Constitution and Article II, Section 17, of the Montana Constitution."

To be blunt: MTLA believes that the corporations, insurance companies, and other "deep pocket" proponents of HB 571 and HB 572 know that both HB 571 and HB 572 are unconstitutional and want to force the Montana Supreme Court to invalidate both in order to precipitate a constitutional confrontation. That's why both bills contain nonseverability clauses. That's why HB 572 contains a bizarre contingent effective date which extends years, even decades into the future--long after subsequent Montana Legislatures have come and gone. And that's why the Montana Chamber of Commerce last week publicly challenged the authority of the Montana Supreme Court and threatened a constitutional amendment (see accompanying transcript).

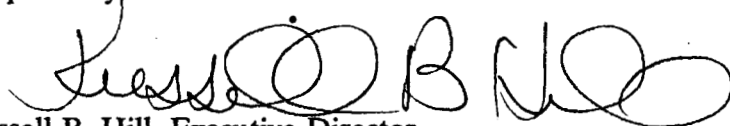
Even if they were constitutional, HB 571 and HB 572 will profoundly discourage all voluntary settlements. Defendants as well as plaintiffs benefit when voluntary, negotiated settlements end litigation. But HB 571 and HB 572 will:

- Make it harder for defendants as well as plaintiffs to voluntarily negotiate settlements. It takes two to tango, and hobbling one hobbles both.
- Increase the burden on Montana courts by discouraging voluntary, negotiated settlements among parties.
- Increase costs to all parties, including insurance premiums. Even when they offer to settle a clear liability claim against their insureds for policy limits, for instance, insurance companies will find plaintiffs reluctant to settle; and even when they do settle a claim for policy limits, insurance companies will still face exposure to the continuing risk of having to defend their nonparty insureds.

Finally, MTLA still believes--as it testified before the Senate Judiciary Committee in 1995--that proponents of so-called "tort reform" have failed to account for the potential interplay between nonparty defenses (such as those proposed this session by HB 571 and HB 572) and a loser-pays scheme (such as HB 553 proposes this session). Whether it agreed with MTLA's testimony or not, the Senate Judiciary Committee in 1995 passed its ill-fated nonparty bill (SB 212) by a vote of 8-3 and tabled SB 308 (a loser-pays bill virtually identical to this session's HB 553) by a vote of 9-2.

If I can provide additional information or assistance, please contact me.

Respectfully,

A handwritten signature in black ink, appearing to read "Russell B. Hill", written over a horizontal line.

Russell B. Hill, Executive Director

Opinions

Helena Independent Record

Opinion Page Editor:
Bill Skidmore 447-4085

Liability ruling right, again

A long-standing reality in the practice of law is that lawsuits are more likely to be filed against those defendants who have the deepest pockets.

It's a common sense notion — why not go for the big bucks? — but it is loudly decried by large corporations and others who contend it often is patently unfair.

Seldom is one defendant solely responsible for a plaintiff's injury. In a car accident, for instance, possible defendants could include the other driver; the auto manufacturer, the mechanic who last worked on the car, the agency responsible for road maintenance, and so on. Why should a single party that happened to be named in the lawsuit be liable for damages when other parties not in the lawsuit might also share responsibility?

In response to such complaints, the Legislature has repeatedly tried to let defendants claim that liability should be apportioned among others, even if they aren't named in the lawsuit. Each time, in 1979,

An IR view

1986, and 1994, the state Supreme Court shot down the law.

The Legislature's latest attempt to revise the law came in 1995. Last week, the high court shot that down, too. And, as was the case in the earlier decisions, the court was right to do so.

In the earlier rulings, the court held that it was unconstitutional for a judge to apportion liability to a third party not named in the case — unfair to the plaintiff who might therefore get a smaller settlement, and certainly unfair to the third party who had no chance to defend himself and his reputation.

The 1995 Legislature changed the law to put the burden of proving the non party's liability on the defendant and to require that the non party be notified that he or she is being blamed.

In the case decided last week, involving a woman

who sued the Southgate Mall in Missoula after she slipped on a wet floor and badly injured her leg, part of the mall's defense (based on the newly revised law) was that the woman's doctor also was responsible for her condition.

The justices, finding that new revisions still were unconstitutional, threw out the defense.

They said, correctly, that despite the revisions, a third party still lacked the opportunity to actually appear in court and defend itself. They also noted that the defendant in such a case has another option: it can join to the case anyone it feels to share responsibility as a third-party defendant. When that is done, wrote Justice Terry Trieweller, "any apportionment of liability to that third party is much more likely to bear some relationship to reality."

The Legislature has a legitimate interest in trying to ensure that no party to a lawsuit should have to bear a disproportionate amount of damages simply because it has the most money. But the Supreme Court is correct to insist that legislators do it right.

November 29, 1996

Bill would allow Legislature to ignore court verdicts

OLYMPIA (AP) — Rep. Kathy Lambert doesn't think it's fair that the state Supreme Court gets to decide if laws passed by the Washington Legislature are constitutional.

So the Woodinville Republican and fifth-grade teacher is pushing a measure that would let the Legislature, by a simple ma-

jority, ignore Supreme Court decisions and force the executive branch to carry out the Legislature's laws despite high court opinions.

The proposal to greatly change the "balance of power" doctrine among the three branches of government is given little chance of passage. But it has astonished

some of Lambert's colleagues.

"I'm absolutely dumbfounded," said Rep. Pat Lantz, a Gig Harbor Democrat who sits with Lambert on the House Law and Justice Committee. Lantz, a lawyer, said "It was so astounding to me that it sent me back to my law school constitutional law textbook. It is settled law. The

system has worked for 200 years."

But Lambert, and 33 GOP House co-sponsors, think it is a good idea given the fact that when the high court sees fit to declare new laws unconstitutional, lawmakers can only snarl or rewrite the law to comply with the decision.

SENATE JUDICIARY COMMITTEE
COMMITTEE NO. 7
DATE 3/20/97
FILE NO. HB 571 & 572

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ROBERT CAMERON
DAVID L. WEAVER

AREA CODE 406
TELEPHONE 586-0576

March 20, 1997

Members of the Senate Judiciary Committee:

I am a Bozeman attorney. I represented Roberta and Martin Plumb in Plumb v. District Court, the Supreme Court case in which the "nonparty defense" or "empty chair defense" was declared unconstitutional.

There are two major reasons why HB 571 and HB 572 should not pass. First, these bills will inevitably be declared unconstitutional under the Plumb rule because they require apportionment of percentages of fault to person not parties to the case. Second, HB 571 and HB 572 represent bad public policy, by creating a substantial impediment to compromise settlement of lawsuits.

1. **HB 571 AND HB 572 VIOLATE CONSTITUTIONAL PRINCIPLES OF SUBSTANTIVE DUE PROCESS.**

Under the Montana Supreme Court's decisions in Newville v. State Dept. of Family Services and Plumb v. District Court, it is unconstitutional to apportion a specific percentage of liability to a person not a party to the lawsuit.

As the Montana Supreme Court pointed out in Newville, the danger created by the nonparty defense is an artificially inflated apportionment of negligence attributed to the nonparty defendant.

No attorney represented [the nonparty defendant's] interests at trial and as a result, it is possible that the application of percentage of negligence was higher than would have been appropriate had the facts as to her case been presented by her own counsel.

Newville, 267 Mont. at 254.

The principle on which Plumb was decided is not complex. A jury cannot be expected to accurately assign a percentage of

blame to persons not there to defend themselves. Our system of justice can properly function only when opposing parties are present before the court, making their respective arguments, and each side vigorously advocating its own position. The trier of fact can render a just decision because it has heard from all sides. The whole process falls apart where the trier of fact attempts to assign a percentage of negligence to a person not participating in the case.

It is true that HB 571 gives settled or released persons an "opportunity" to intervene in the action to defend against the named defendant's charge. This does not, however, cure the constitutional defect identified in Plumb. In Plumb, the Court concluded that apportionment of a percentage of liability to a nonparty violates the constitutional rights of both the nonparty and the claimant. Providing the settled nonparty the right to intervene might arguably cure the constitutional defect with respect to the settled nonparty. But in those instances in which the settled nonparty elects not to intervene, then the claimant's constitutional rights are violated every bit as much as under the scheme declared unconstitutional in Plumb.

The Court in Plumb gave 4 reasons why it is unconstitutional to apportion a specific percentage of negligence to person not there to defend themselves:

1. Liability would be assigned to a nonparty without affording him the opportunity to defend himself. The percentage of liability assigned to the nonparty would not be a reliable or accurate apportionment.
2. The claimant's right to recover a fair measure of damages is jeopardized by the potentially disproportionate assignment of liability to a nonparty who had no opportunity to appear and defend himself.
3. It is unconstitutional to put the burden on the plaintiff's attorney to serve in a dual capacity, representing both the plaintiff and the nonparty.
4. Other procedural mechanisms exist for bringing nonparties into the lawsuit through third-party practice (not applicable to settled defendants)

HB 571 gives settled persons the "opportunity" to intervene in

the action, thereby addressing Number 1 above. However, the constitutional problems enumerated in Numbers 2 and 3 above are not cured by HB 571, because the settled nonparty may elect not to appear and defend.

In summary, enactment of HB 571 and 572 would be an unconstitutional deprivation of claimants' right to substantive due process of law, because both bills contain provisions for the trier of fact to apportion a percentage of fault to persons not there to defend themselves.

2. HB 571 AND HB 572 REPRESENT BAD PUBLIC POLICY, BY CREATING A SUBSTANTIAL IMPEDIMENT TO COMPROMISE SETTLEMENT OF LAWSUITS.

HB 571 provides in part that

a release of settlement entered into by a claimant constitutes an assumption of the liability, if any, allocated to the settled or released person. The claim of the releasing or settling claimant against other persons is reduced by the percentage of the released or settled person's equitable share of the obligation, as determined under subsection (4).

The dockets of our district courts are becoming more and more crowded every day. The burdens on the resources of our courts are likewise increasing. The last thing Montana needs is a law that will dramatically reduce settlement of negligence cases.

Compromise settlements are strongly favored in the law for two reasons: (1) settlements "relieve the labors of the courts, and avoid expense," and (2) "where the parties agree between themselves upon a settlement of the claim, the result reached is frequently a more equitable adjustment than is possible to be had in a court of law." Black v. Martin, 88 Mont. 256, 292 P. 577 (1930).

Advocates of HB 571 and 572 are apparently concerned about potential unfairness where one defendant settles out of a lawsuit. Such concerns are not valid. The "Dollar Credit" Rule amply protects the interests of those non-settling defendants. Although a non-settling defendant cannot sue settled defendants for contribution, it has long been the rule in Montana that "the

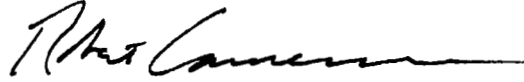
claim of the plaintiff against the remaining tortfeasors is to be reduced by a dollar credit in the amount of consideration paid by the settling tortfeasor." Deere v. District Court, 224 Mont. 384, 730 P.2d 396 (1986).

Under HB 571 and 572, Plaintiffs will be extremely reluctant to settle, because if they do, they will have to anticipate putting on a full-blown defense case on behalf of the settled nonparty. And this is precisely what the Supreme Court in Plumb identified as unconstitutional: forcing plaintiff's to put on a full-blown defense case on behalf of a person not a party to the action.

Additionally, defendants will be more reluctant to settle, knowing that they will become the "empty chair" target of the remaining defendant. Under HB 571, they would have the option of hiring an attorney at considerable expense and participating at trial, but if they are forced to go through all that much trouble to protect their name and reputation, they have very little incentive to settle.

HB 571 and HB 572 are clearly unconstitutional, and are bad public policy for the people of Montana. I urge the committee to reject passage of these bills.

Respectfully submitted,



Robert Cameron

3/20/97

DATE41

41

DATE 3/20/97
 SENATE COMMITTEE ON Judiciary
 BILLS BEING HEARD TODAY: HB 264,
HB 572, HB 571

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
100 Jen	MAHS	HB 264		✓
W. James Kembel	City of Billings	HB 571, 572	✓	
ROBERT CAMERON		HB 571, 572		✓
Barbara Rant	US West Communcn	HB 571, 572	✓	
David Gatz	School Dist #7	HD 264		✓
Craig J. Anderson	Youth Court Procs	HD 264		✓
Allen C. Henshall Jr.	Walt MD. Reg. Juv. Div	HD 264		✓
Greg JACKSON	MACOLIA	HB 571 572	✓	
Bob Runkel	OPI	HB 264		✓
MARY ALICE COOK	Advocate for Children + Families	HB 264		✓
Carl Schweitzer	MT Contractors Ass'n	HB 571 HB 572	✓	
Dwight Easton	Farmers Ins Groups	HB 572		✓
Russ Ritter	Wash Corp	HB 571/572	✓	
John Shontz	MT ASSOC REALTORS	571/572	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3-20-97

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 571, 572
HB 264

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Dwight Easton	Farmers Ins	HB 571	✓	
Ben Hovdahl	MT Motor Carriers Assn	HB 572 HB 571	✓ ✓	
Brad Griffin	MT Hardware & Implement MT Retail Assoc	HB 571 HB 572	✓ ✓	
Al McMillan	Laurel Schools	HB 264	✓	
John Sullivan	MT Defense Trial Lawyers	HB 572		✓ Amendment to Section 4
Eric Deane	MEA	HB 264		✓
Jacqueline Gramark	Am. Ins. Ass'n	HB 572		✓ unless amdt
Chris Gallus	MT LIABILITY Co. MT CHAMBER	HB 571 HB 572	✓	
Don Allen	Nat. Wool Products Assn	HB 571 HB 572	✓	
David Olson	MT Chamber	571 & 572	✓	
Janith B. Herzig	Citizen	264	JPB ✓	
Sally K. Strassberg	employee of Citizen, Missions Youth House	264		2
Russell B. Hill	MT Trial Lawyers	HB 571 HB 572		✓
NATL SCHWABER	YOUTH OF AMERICA!	HB 264		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Cathy Wimmer	MBCC	SB 364		✓
Mark Jamison	Doctors' Co	512		✓ unless amended
JOE FURSTON	Helena Schools	HB 264		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on March 27, 1997,
at 10:00 a.m., in the Senate Judiciary Chambers of the State
Capitol, Helena, Montana.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: None
Executive Action: HB 100, HB 264, HB 306, HB
571, HB 572

EXECUTIVE ACTION ON HB 100

Amendments: hb010004.asf (EXHIBIT #1)

Motion/Vote: VICE CHAIRMAN LORENTS GROSFIELD MOVED THAT THE
COMMITTEE RECONSIDER ITS ACTION TO STRIP hb010003.asf FROM THE
BILL YESTERDAY. THE MOTION CARRIED UNANIMOUSLY.

Discussion: Valencia Lane. Yesterday the Committee adopted
hb010003.asf. Today we are looking at hb010004.asf. In the
hb010003.asf amendments, stated approved public and private
treatment facilities were moved to supervisory lease. There was
the change in (4) (a), and subsection (d) clarified following

{Tape: 1; Side: B; Approx. Time Count: #28.4; Comments: 11:22 a.m.}

EXECUTIVE ACTION ON HB 572

Discussion: Valencia Lane. This does two things. It abolishes joint and several liability, and requires apportionment of fault to everyone whether they are made a party to a case or not, i.e., a pure comparative negligence law, and it allows the defendant to bring in the question of apportionment of fault whether immune, settled, or released from the case. It preserves three exceptions to joint and several liability.

{Tape: 1; Side: B; Approx. Time Count: #32.5; Comments: None}

Page Dringman. This had a diverse reading from both the public and the legislature concerning joint and several liability. The key difference is switching to 0-100 percent liability.

Russell Hill. There is a big difference between current law and centuries of tradition in Montana and elsewhere, and what this bill does. Orphan share means someone can't pay their share. If we're going to pure comparative fault, everyone only deals in dollars only to the level of their fault.

HB 572 doesn't attempt to conform to the Montana Supreme Court decision, and I believe the Committee needs to discuss the contingency date.

My understanding of the non-severability clause is that if any part is unconstitutional, it doesn't go back to pre-bill language, but leaves holes in the law.

CHAIRMAN CRIPPEN. The only way to get a law off the books is to repeal it, but it could be unenforceable.

Jacqueline Lenmark. We do oppose the pure comparative negligence amendment, and did favor HB 572 over HB 571 with that amendment removed.

{Tape: 2; Side: A; Approx. Time Count: #2.8; Comments: 11:33 a.m.}

Valencia Lane. On page 1, line 9-10, comparative negligence allows the plaintiff to still sue for up to the remaining one percent of liability. Without this, it would eliminate joint liability (currently, 51 percent or more responsible), making each party responsible for 100 percent of the plaintiff's recovery, leaving a several liability rule under which each party is responsible for their own percent of liability.

{Tape: 2; Side: A; Approx. Time Count: #4.5; Comments: 11:34 a.m.}

Section 27-1-702, MCA, is the comparative negligence rule. Section 27-1-703, MCA, is multiple defendants, and talks about the apportionment of the liability.

SEN. HOLDEN. On page 5, lines 20-22, the Ward Shanahan amendments (**EXHIBIT #5**) would re-institute the 50 percent rule? **Valencia Lane.** I believe so.

CHAIRMAN CRIPPEN. With that you'd be back to the original status of the bill, but you would still have coordination with HB 571. **Stan Kaleczyk.** It was proposed by an attorney on the House Judiciary Committee. If the Committee adopts the Shanahan amendments, you would still have joint and several liability, but if you had 51 percent or more liability, as the plaintiff, you could not file.

CHAIRMAN CRIPPEN. We need to deal with the House amendments.

Motion: **SEN. HOLDEN MOVED TO ADOPT THE SHANAHAN AMENDMENTS.**

Discussion: **Stan Kaleczyk.** The non-severability clause was put on in the House at the same time, but I don't know if it's in the Shanahan amendments.

VICE CHAIRMAN GROSFIELD. What was the rationale of putting joint and severability in this bill? **Page Dringman.** If you take out pure comparative negligence, you could take out joint and severability, as well. **Valencia Lane.** Then it would revert back to the 50 percent rule. **CHAIRMAN CRIPPEN.** And then we would need to strike New Section 9 and reinstate the old New Section 9.

Valencia Lane. Just so I understand, the motion is on page 5, line 20, following "property" to reinsert the stricken language, delete the non-severability clause, and reinsert the severability clause.

SEN. DOHERTY. If we only want to make people responsible to their percent of responsibility, we're going to make the plaintiffs responsible for their percent of responsibility, so it would seem we need to go with pure comparative negligence.

Vote: **SEN. HOLDEN'S MOTION TO ADOPT THE SHANAHAN AMENDMENTS CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS DOHERTY, BISHOP, BARTLETT, AND HALLIGAN WHO VOTED NO.**

CHAIRMAN CRIPPEN. I'm tempted to leave the effective date, as one bill has to die, either HB 571 or HB 572.

Motion/Vote: **SEN. SHARON ESTRADA MOVED TO TABLE HB 572. THE MOTION FAILED 4-6 IN A ROLL CALL VOTE WITH SENATORS HOLDEN, GROSFIELD, BISHOP, AND JABS VOTING NO.**

Motion: **SEN. HOLDEN MOVED HB 572 BE CONCURRED IN AS AMENDED.**

Discussion: SEN. DOHERTY. For the record, I echo the comments on HB 571, but would magnifying my comments to the bullying affect to intimidate the Court. "The contingent effective date is the screwiest thing I have ever seen in my entire life." Passing bills with contingent effective dates, depending upon the constitutionality of some case which may or may not happen in one to thirty years is the most "back-assward" thing I can think of.

{Tape: 2; Side: A; Approx. Time Count: #15.6; Comments: None}

If HB 571 is found to be constitutional we don't need to clutter it up with this. If it's found to be constitutional, we can go in and try it again next session. HB 572 contains the same constitutional infirmities in allowing fault to be apportioned to someone not there. I believe the net attempt of HB 571 and HB 572 is an attempt to bully the Montana Supreme Court to make certain decision, and then laying ground work in a long term political campaign.

SEN. HALLIGAN. In terms of good public policy, I've never seen this done in seventeen years. This is a fundamental change in tort policy. We need to come back and look at this.

Valencia Lane. I don't think the contingency clause will work.

SEN. HOLDEN. I see SEN. HALLIGAN's frustration with the public policy of the whole session as a minority, but the Legislature will still meet in two years so we can address if the Montana Supreme Court strikes it down.

Vote: SEN. HOLDEN'S MOTION THAT HB 572 BE CONCURRED IN AS AMENDED CARRIED 7-3 IN A ROLL CALL VOTE WITH SENATORS HALLIGAN, DOHERTY, AND BARTLETT VOTING NO.

{Tape: 2; Side: A; Approx. Time Count: #22.6; Comments: None}

EXECUTIVE ACTION ON HB 306

Amendments: hb030605.avl (EXHIBIT #6)

Motion: SEN. HOLDEN MOVED TO ADOPT AMENDMENTS hb030605.avl.

Discussion: SEN. HOLDEN. Page 2, line 27 deals with re-routing public policy. The bill says that if property values are reduced less than five percent, the owner can complain in court. My amendment changes this figure to 20 percent.

VICE CHAIRMAN GROSFIELD. I don't believe the amendment goes far enough. It should probably be 30 percent, but I don't like the bill either. There has been a 30 percent decision by the Court in Montana. This bill doesn't make sense. There is the problem of substantial and disproportionate. I also have a problem with Section 6. It doesn't make sense to put this in state law.

March 20th 1997

Mr. Chairman, Senator Crippen and Members of the Senate Judiciary Committee:

Following is an Amendment to the Second Reading version of HB 572 which is offered on behalf of Farmers Insurance Group:

1. Page 5, line 20

Following: "property"

Insert: "IF THE CONTRIBUTORY FAULT WAS NOT GREATER THAN THE
FAULT OF THE DEFENDANT OR THE COMBINED FAULT OF
ALL DEFENDANTS AND NONPARTIES,"

Discussion: The Second reading copy of the bill as presented to you was amended to describe a legal concept that is known as "Pure Comparative Negligence". This concept radically changes the existing tort law of Montana. Present law requires a finding that claimants must be less than 50% at fault themselves in order to recover anything at all. Any award of damages is then reduced by the amount of the fault attributable to the claimant and by the amount of fault attributable to any third party which may be involved.

HB 572 as now written, completely abandons the requirement that the claimant, be less than 50% at fault. Instead it institutes a system where a claimant might be 90% at fault but could still sue the other parties for the remaining 10%. It would permit persons who are themselves the principal cause of their own injury to sue for and receive damages from those substantially less at fault or merely slightly responsible.

The economic effect of the radical changes now contained in HB 572 should be apparent. We respectfully request that you amend HB 572 back to its introduced form. However, if you find that this can't be done, you should give HB 572 a "DO NOT PASS".

Ward Shanahan
for Farmers Insurance Group
33 South Last Chance Gulch
P.O. Box 1715
Helena, MT. 59624
Tel: 406-442-8560

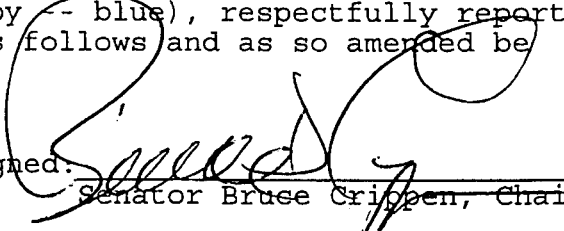


SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 27, 1997

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill 572 (third reading copy -- blue), respectfully report that House Bill 572 be amended as follows and as so amended be concurred in.

Signed: 

Senator Bruce Crippen, Chair

That such amendments read:

1. Title, lines 9 and 10.

Following: "SUE;" on line 9

Strike: remainder of line 9 through "RECOVERY;" on line 10

2. Page 5, line 22.

Following: "~~nonparties~~"

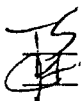
Insert: "if the contributory fault was not greater than the fault of the defendant or the combined fault of all defendants and nonparties"

3. Page 9, lines 8 through 10.

Strike: section 9 in its entirety

Insert: "NEW SECTION. **Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

-END-



Amd. Coord.
Sec. of Senate



Senator Carrying Bill

671543SC.STS



**MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE**

ROLL CALL

DATE

3-27-97

[illegible]

SEN:1995
wp.rollcall.man
CS-09

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3/27/97 BILL NO. HB 572 NUMBER 1

MOTION: HB 572
Estrada - table

NAME	AYE	NO
SUE BARTLETT	✓	
AL BISHOP		✓
STEVE DOHERTY	✓	
SHARON ESTRADA	✓	
MIKE HALLIGAN	✓	
RIC HOLDEN		✓
REINY JABS		✓
WALT MC NUTT		✓
LORENTS GROSFIELD, VICE CHAIRMAN		✓
BRUCE CRIPPEN, CHAIRMAN		✓
	4	6

SEN:1995
wp:rlclvote.man
CS-11

**MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE**

DATE 3/27/97 BILL NO. HB 572 NUMBER 1

MOTION: Walden - BCIAA

[illegible]

SEN:1995
wp:rlclvote.man
CS-11

OFFICE OF THE GOVERNOR

STATE OF MONTANA



MARC RACICOT
GOVERNOR

STATE CAPITOL
HELENA, MONTANA 59620-0801

April 21, 1997

The Honorable John Mercer
Speaker of the House
State Capitol
Helena MT 59620

The Honorable Gary Aklestad
President of the Senate
State Capitol
Helena MT 59620

Dear Speaker Mercer and President Aklestad:

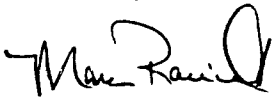
In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby return with amendments House Bill 572, **"AN ACT PROVIDING FOR SEVERAL LIABILITY FOR MOST TORT ACTIONS; LIMITING JOINT AND SEVERAL LIABILITY TO CERTAIN SPECIFIED TORT ACTIONS; PROVIDING FOR THE EFFECT OF A RELEASE OR A COVENANT NOT TO SUE; AMENDING SECTIONS 25-9-411, 27-1-702, 27-1-703, 27-1-719, 28-1-301, AND 28-11-311, MCA; AND PROVIDING CONTINGENT EFFECTIVE DATES AND AN APPLICABILITY DATE"** for the following reasons.

House Bill 572 provides for a system of comparative fault in which persons are held responsible only to the extent to which they cause or contribute to the harm. It apportions liability among all tortfeasors according to their equitable share of fault.

While I support House Bill 572, it requires technical changes in order to provide that several liability and apportionment of liability apply to defendants acting in concert or in an agency relationship, while not affecting the doctrines of vicarious liability and respondeat superior. Without the amendments, a corporation sued for the acts of its employee may be excluded from the application of several liability and the apportionment of damages to other parties at fault. The amendments leave in place the idea that the principal cannot transfer liability to its agent.

Representative Anderson, the bill's sponsor, has been informed of and understands the need for these amendments.

Sincerely,

A handwritten signature in black ink, appearing to read "Marc Racicot". The signature is stylized with a large, looped initial "M" and a cursive "Racicot".

MARC RACICOT
Governor

GOVERNOR'S AMENDMENTS TO

House Bill No. 572

(Reference Copy)

April 21, 1997

1. Page 3, line 10.

Following: "from"

Strike: ":",

2. Page 3, lines 11 through 14.

Strike: subsections (a) through (c) in their entirety

Insert: "an act or omission that violates a state environmental law relating to hazardous or deleterious substances."

Insert: "(8) Parties whose liability arises from acts or omissions in concert or from acts or omissions arising from an agency or employment relationship shall be apportioned a single percentage of fault and shall be treated as a single party for purposes of this section."

3. Page 3, line 15.

Strike: "8"

Insert: "9"

4. Page 5, line 28.

Following: "**liability.**"

Strike: "(1)"

5. Page 6, lines 7 through 9.

Strike: subsection (2) in its entirety

HOUSE BILL NO. 572

INTRODUCED BY ANDERSON, REHBEIN, STORY, TASH, BITNEY, JORE, ELLIS, BRAINARD, KEENAN,
DEVANEY, CLARK, ORR, MOOD, BEAUDRY, MCGEE, HIBBARD, CURTISS, SIMPKINS, M. HANSON,
WELLS, GRIMES, SOFT, KNOX, L. TAYLOR, KASTEN, GRADY, FELAND, CRIPPEN, ESTRADA,
GROSFIELD, MCNUTT, BOHARSKI, HOLLAND

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR SEVERAL LIABILITY FOR MOST TORT
ACTIONS; LIMITING JOINT AND SEVERAL LIABILITY TO CERTAIN SPECIFIED TORT ACTIONS; PROVIDING
FOR THE EFFECT OF A RELEASE OR OF A COVENANT NOT TO SUE; ~~PROVIDING THAT NO AMOUNT OF~~
~~CONTRIBUTORY FAULT BARS RECOVERY~~; AMENDING SECTIONS 25-9-411, 27-1-702, 27-1-703,
27-1-719, 28-1-301, AND 28-11-311, MCA; AND PROVIDING CONTINGENT EFFECTIVE DATES AND AN
APPLICABILITY DATE."

WHEREAS, efforts of the Legislature to amend the comparative negligence statute, which is
premised on a modified joint and several liability scheme, have repeatedly been struck down by the
Montana Supreme Court; and

WHEREAS, the Montana Supreme Court rulings prohibiting the consideration of fault attributable
to nonparties impair the effectiveness of the current modified joint and several liability system in Montana;
and

WHEREAS, the Legislature intends that the policy of the state should be a system of comparative
fault in which persons are held responsible only to the extent to which they cause or contribute to the
harm; and

WHEREAS, the current system of joint and several liability, which apportions all liability only among
parties to the action, fails to apportion liability among all tortfeasors according to their equitable share of
fault; and

WHEREAS, the Legislature recognizes that public policy favors fair settlements that accurately
reflect the liability of settled or released parties; and

WHEREAS, the Legislature is concerned with the present inequitable results of solvent defendants
having to pay for the liability of insolvent, immune, or settled parties; and

WHEREAS, the present system of joint and several liability for all tort actions does not reflect the

1 state's policy of liability in proportion to fault; and

2 WHEREAS, the Legislature recognizes that joint and several liability should be retained for certain
3 situations; and

4 WHEREAS, at least ten other states have abrogated the doctrine of joint and several liability, except
5 for specific situations; and

6 WHEREAS, the Legislature has the power to alter tort causes of action to promote legitimate state
7 interests.

8 THEREFORE, the Legislature declares that the doctrine of joint and several liability is abolished,
9 except for specific causes of action, and is replaced with a comparative fault system utilizing the principles
10 of several liability.

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **NEW SECTION. Section 1. Several liability -- purpose -- pleading -- determination -- nonparties.**

15 (1) The purpose of 27-1-703 and this section is to substitute several liability for the former law providing
16 for joint and several liability, except for certain actions. The purpose of several liability is to allocate
17 responsibility based on fault to all parties to an occurrence, rather than only to the parties to the litigation,
18 and to ensure that the liability of each party to an occurrence is allocated in direct proportion to that party's
19 fault.

20 (2) In an action brought as a result of the death of a person or injury to a person or property, the
21 liability of a defendant is several only and is not joint, except as provided in subsection (7). A defendant
22 is liable only for that percentage of damages that is equal to the ratio of defendant's fault to the total fault
23 attributed to all persons involved in the occurrence from which the action arose, including claimants,
24 defendants, and persons not party to the action. A separate judgment must be entered against the
25 defendant for that amount.

26 (3) In determining the percentage of fault of persons who are parties to the action, the trier of fact
27 shall consider the fault of persons not a party to the action, based upon evidence of those persons' fault,
28 that is admissible in evidence. Assessment of fault against a nonparty does not subject the nonparty to
29 liability in the action or any other action and may not be introduced as evidence of liability in any other
30 action.

1 (4) The percentage of fault attributable to parties to the action may total less than 100% if the trier
2 of fact finds that fault contributing to cause the claimant's loss is attributable to other persons.

3 (5) The jury shall return a special verdict, or the judge shall make special findings in the absence
4 of a jury, determining the percentage of fault attributable to each party and determining the total amount
5 of damages sustained by the claimant.

6 (6) A defendant shall affirmatively plead comparative fault and identify in the answer or within a
7 reasonable amount of time after filing the answer as determined by the court, each person who the
8 defendant alleges is at fault with respect to the occurrence that is the basis for the action. A defendant
9 who pleads the comparative fault of another has the burden of proving the fault.

10 (7) Section 27-1-703 applies and this section does not apply to an action arising from:

11 ~~(a) the concerted acts or omissions of two or more persons;~~

12 ~~(b) the act or omission of a person acting as the agent or servant of another; or~~

13 ~~(c) an act or omission that violates a state environmental law relating to hazardous or deleterious~~
14 ~~substances.~~ AN ACT OR OMISSION THAT VIOLATES A STATE ENVIRONMENTAL LAW RELATING TO
15 HAZARDOUS OR DELETERIOUS SUBSTANCES.

16 (8) PARTIES WHOSE LIABILITY ARISES FROM ACTS OR OMISSIONS IN CONCERT OR FROM
17 ACTS OR OMISSIONS ARISING FROM AN AGENCY OR EMPLOYMENT RELATIONSHIP MUST BE
18 APPORTIONED A SINGLE PERCENTAGE OF FAULT AND MUST BE TREATED AS A SINGLE PARTY FOR
19 PURPOSES OF THIS SECTION.

20 ~~(8)(9)~~ (9) For purposes of this section, "fault" means an act or omission that proximately caused or
21 contributed to injury or damages sustained by a person seeking recovery and includes negligence in any
22 of its degrees, contributory negligence, strict liability, and products liability.

23
24 NEW SECTION. Section 2. Effect of a release or covenant not to sue. A release or covenant not
25 to sue given to one of two or more persons potentially liable in tort for the same injury, death, damage, or
26 loss:

27 (1) does not discharge any of the other persons from liability for the person's several pro rata share
28 of liability unless the terms of the release or covenant provide for a discharge of liability;

29 (2) reduces the aggregate claim against the other persons to the extent of any percentage of fault
30 found by the trier of fact under [section 1] to be attributable to the person to whom the release or covenant

1 was given; and

2 (3) discharges the person to whom it was given from all liability for contribution.

3
4 **Section 3.** Section 25-9-411, MCA, is amended to read:

5 **"25-9-411. Medical malpractice noneconomic damages limitation.** (1) (a) In a malpractice claim
6 or claims against one or more health care providers based on a single incident of malpractice, an award for
7 past and future damages for noneconomic loss may not exceed \$250,000. All claims for noneconomic loss
8 deriving from injuries to a patient are subject to an award not to exceed \$250,000. This limitation applies
9 whether:

10 (i) based on the same act or a series of acts that allegedly caused the injury, injuries, death, or
11 deaths on which the action or actions are based; or

12 (ii) the act or series of acts were by one or more health care providers.

13 (b) If a single incident of malpractice injures multiple, unrelated patients, the limitation on awards
14 contained in subsection (1)(a) applies to each patient and all claims deriving from injuries to that patient.

15 (2) (a) For purposes of the limitation on awards contained in subsection (1), a claimant has the
16 burden of proving separate injuries, each arising from a different act or series of acts. An award or
17 combination of awards in excess of \$250,000 must be reduced to \$250,000, after which the court shall
18 make other reductions that are required by law. If a combination of awards for past and future noneconomic
19 loss is reduced in the same action, future noneconomic loss must be reduced first and, if necessary to reach
20 the \$250,000 limit, past noneconomic loss must then be reduced. If a combination of awards is reduced
21 to \$250,000, a claimant's share of the \$250,000 must be the same percentage as the claimant's share of
22 the combined awards before reduction.

23 (b) For each claimant, further reductions must be made in the following order:

24 (i) first, reductions under 27-1-702; and

25 (ii) ~~second, reductions under 27-1-703; and~~

26 ~~(iii) third~~ second, setoffs and credits to which a defendant is entitled.

27 (3) An award of future damages for noneconomic loss may not be discounted to present value.

28 (4) The \$250,000 limit provided for in subsection (1) may not be disclosed to a jury.

29 (5) As used in this section, the following definitions apply:

30 (a) "Claimant" includes but is not limited to:

1 (i) a person suffering bodily injury;

2 (ii) a person making a claim as a result of bodily injury to or the death of another;

3 (iii) a person making a claim on behalf of someone who suffered bodily injury or death;

4 (iv) the representative of the estate of a person who suffered bodily injury or death; or

5 (v) a person bringing a wrongful death action.

6 (b) "Health care provider" means a physician, dentist, podiatrist, optometrist, chiropractor, physical
7 therapist, or nurse licensed under Title 37 or a health care facility licensed under Title 50, chapter 5.

8 (c) "Malpractice claim" means a claim based on a negligent act or omission by a health care
9 provider in the rendering of professional services that is the proximate cause of a personal injury or
10 wrongful death.

11 (d) "Noneconomic loss" means subjective, nonmonetary loss, including but not limited to:

12 (i) physical and mental pain or suffering;

13 (ii) emotional distress;

14 (iii) inconvenience;

15 (iv) subjective, nonmonetary loss arising from physical impairment or disfigurement;

16 (v) loss of society, companionship, and consortium, other than household services;

17 (vi) injury to reputation; and

18 (vii) humiliation.

19 (e) "Patient" means a person who receives services from a health care provider."

20
21 **Section 4.** Section 27-1-702, MCA, is amended to read:

22 **"27-1-702. Comparative ~~negligence~~ fault -- extent to which contributory ~~negligence~~ fault bars**
23 **recovery in action for damages.** Contributory ~~negligence shall~~ fault does not bar recovery in an action by
24 ~~any a person or his a person's~~ legal representative to recover tort damages for ~~negligence resulting in death~~
25 ~~of a person or injury to a person or property if such negligence the contributory fault was not greater than~~
26 ~~the negligence fault of the person defendant or the combined negligence fault of all persons against whom~~
27 ~~recovery is sought defendants and nonparties~~ IF THE CONTRIBUTORY FAULT WAS NOT GREATER THAN
28 THE FAULT OF THE DEFENDANT OR THE COMBINED FAULT OF ALL DEFENDANTS AND NONPARTIES,
29 but ~~any~~ damages allowed ~~shall~~ must be diminished in the proportion to the ~~amount of negligence~~
30 percentage of fault attributable to the person recovering."

Section 5. Section 27-1-703, MCA, is amended to read:

"27-1-703. Multiple defendants -- determination of liability. (1) Except as provided in subsections (2) and (3), whenever the negligence of a party in any action is an issue ~~in an action referred to in section 1(7)(e)~~, each EACH party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of.

~~(2) A party whose negligence is determined to be 50% or less of the combined negligence of all persons described in subsection (4) is severally liable only and is responsible only for the amount of negligence attributable to that party, except as provided in subsection (3). The remaining parties are jointly and severally liable for the total less the amount attributable to the claimant.~~

~~(3)(2) A In an action referred to in section 1(7)(a) or (7)(b), a party may be jointly liable for all damages caused by the negligence of another if both acted in concert in contributing to the claimant's damages or if one party acted as an agent of the other.~~

~~(4) On motion of any party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence may have contributed as a proximate cause to the injury complained of may be joined as an additional party to the action. For purposes of determining the percentage of liability attributable to each party whose action contributed to the injury complained of, the trier of fact shall consider the negligence of the claimant, injured person, defendants, and third party defendants. The liability of nonparties, including persons released from liability by the claimant and persons immune from liability to the claimant, must also be considered by the trier of fact, as provided in subsection (6). The trier of fact shall apportion the percentage of negligence of all persons listed in this subsection. Contribution must be proportional to the liability of the parties against whom recovery is allowed. Nothing contained in this section makes any party indispensable pursuant to Rule 19, Montana Rules of Civil Procedure.~~

~~(5) If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties shall contribute a proportional part of the unpaid portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party. A party found to be 50% or less negligent for the injury complained of is liable for contribution under this section only up to the percentage of negligence attributed to that party.~~

~~(6) (a) In an action based on negligence, a defendant may assert as a defense that the damages~~

1 of the claimant were caused in full or in part by a nonparty, which may be referred to as a nonparty
2 defense.

3 ~~(b) In determining the percentage of liability attributable to persons who are parties to the action,~~
4 ~~the trier of fact shall consider the negligence of nonparties, including persons released from liability by the~~
5 ~~claimant and persons immune from liability to the claimant, if a nonparty defense is properly asserted in~~
6 ~~accordance with this subsection (6). A finding of negligence of a nonparty is not a presumptive or~~
7 ~~conclusive finding as to that nonparty for purposes of a prior or subsequent action involving that nonparty.~~

8 ~~(c) The burden of proof as to a nonparty's liability is on the defendant or defendants who~~
9 ~~affirmatively plead the nonparty defense, but this subsection (6) does not relieve the claimant of the burden~~
10 ~~of proving that negligence on the part of the defendant or defendants contributed as a proximate cause to~~
11 ~~the injury of the claimant or alter other proof requirements.~~

12 ~~(d) A nonparty defense must be affirmatively pleaded as a part of the answer. A defendant who~~
13 ~~gains actual knowledge of a nonparty defense after the filing of that defendant's answer may plead the~~
14 ~~defense with reasonable promptness, as determined by the trial court, in a manner that is consistent with:~~

15 ~~(i) giving the defendant a reasonable opportunity to discover the existence of a nonparty defense;~~

16 ~~(ii) giving the claimant a reasonable opportunity to defend against a nonparty defense; and~~

17 ~~(iii) giving the claimant a reasonable opportunity, if appropriate, to add the nonparty as an additional~~
18 ~~defendant to the action before the expiration of the period of limitation applicable to the claim. However,~~
19 ~~this subsection (iii) does not extend the period of limitation or revive the action if the period of limitation~~
20 ~~has expired.~~

21 ~~(e) If a defendant asserts a nonparty defense, the defendant shall notify each nonparty who the~~
22 ~~defendant alleges caused the claimant's injuries, in whole or in part. Notification must be made by mailing~~
23 ~~the defendant's answer to each nonparty at the nonparty's last known address by certified mail, return~~
24 ~~receipt requested."~~

25
26 **Section 6. Section 27-1-719, MCA, is amended to read:**

27 **"27-1-719. Liability of seller of product for physical harm to user or consumer. (1) As used in this**
28 **section, "seller" means a manufacturer, wholesaler, or retailer.**

29 **(2) A person who sells a product in a defective condition unreasonably dangerous to a user or**
30 **consumer or to the property of a user or consumer is liable for physical harm caused by the product to the**

ultimate user or consumer or to ~~his~~ the user's or consumer's property if:

(a) the seller is engaged in the business of selling such a product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of ~~his~~ the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) ~~Except as provided in this subsection, contributory negligence is not~~ Contributory fault is a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to a person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and ~~such~~ the misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative ~~negligence~~ fault set forth in 27-1-702 and [section 1]."

Section 7. Section 28-1-301, MCA, is amended to read:

"28-1-301. Types of obligations involving several persons. Except as provided in 27-1-703 and [section 1], an obligation imposed upon several persons or a right created in favor of several persons may be:

(1) joint;

(2) several; or

(3) joint and several."

Section 8. Section 28-11-311, MCA, is amended to read:

"**28-11-311. Person indemnifying liable jointly and severally.** Except as may be otherwise provided in 27-1-703 and [section 1], ~~one a person~~ who indemnifies another person against an act to be done by the latter is liable jointly with the person indemnified and separately to every person injured by ~~such the~~ act."

~~**NEW SECTION. Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.~~

~~**NEW SECTION. SECTION 9. NONSEVERABILITY.** IT IS THE INTENT OF THE LEGISLATURE THAT EACH PART OF [THIS ACT] IS ESSENTIALLY DEPENDENT UPON EVERY OTHER PART, AND IF ONE PART IS HELD UNCONSTITUTIONAL OR INVALID, ALL OTHER PARTS ARE INVALID.~~

NEW SECTION. SECTION 9. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

NEW SECTION. Section 10. Applicability. [This act] applies to causes of action that arise after [the effective date of this act].

NEW SECTION. Section 11. Contingent effective dates. (1) [This act] is effective on May 11, 1997, if ___ Bill No. ___ [LC1155] is not passed and approved.

(2) If ___ Bill No. ___ [LC1155] is passed and approved and is invalidated or is found to be unconstitutional by the Montana supreme court, [this act] is effective on the day after the effective date of the invalidation or of the finding of unconstitutionality.

-END-